

CHAPTER 13
ACQUISITION OF INFORMATION TECHNOLOGY DEVICES AND SERVICES

471—13.1(14B) Statement of policy. It shall be the policy of the department to obtain the most productive and efficient information technology devices and services that meet or exceed operational standards established by the department and procurement standards established by the council. The mission of the department is to foster the development and application of information technology to improve the lives of Iowans.

471—13.2(14B) General provisions.

13.2(1) Application. These rules shall apply to (a) the process for participating agencies to obtain approval for the acquisition of information technology devices and services, and (b) the acquisition of information technology devices and services by the department for the department, or by the department for a participating agency that has requested the department to procure information technology devices or services on its behalf. Iowa Code section 14B.109, Iowa Code chapter 18, related procurement rules, and interagency agreement(s) between the information technology department and the department of general services may cause certain provisions (i.e., bidding, award, vendor appeal, processes and procedures) of these rules to be implemented by the department of general services in accordance with general services' purchasing statutes and regulations. When purchasing information technology devices or services, general services may use the acquisition methods described in these rules but reserve for itself its own appeal rules.

13.2(2) Purchases by the department. In the event there is no agreement between the department and the department of general services or the departments' successors, rules 13.4(14B) through 13.12(14B,8) shall apply to purchases by the department or purchases by the department on behalf of a participating agency.

13.2(3) Definitions. As used in this chapter unless the context otherwise requires:

"Acquisition" or *"acquire"* means the procurement, purchase, lease, lease/purchase, acceptance of, contracting for, obtaining title to, use of, or any other manner or method for acquiring an interest in information technology items.

"Acquisition document" means any document or instrument that effectuates an acquisition of information technology devices or services including, but not limited to, a purchase order, contract, bill of sale, invoice, grant or agreement.

"Bid document" means a document issued for the purpose of acquiring information technology devices and services, including formal bid documents and informal bid documents.

1. Formal bids include, but are not limited to, the following:

a. Invitation to bid (ITB), in which cost is the sole criterion for choice among responsive bidders. ITBs may be used when the requirements and specifications for acquisitions of information technology devices or services are generally known and available from competing vendors;

b. Request for proposal (RFP) and request for services/strategy (RFS), in which there are specifications, requirements, terms and conditions or criteria other than cost considered in the selection of the vendor;

c. Invitation to qualify (ITQ), which is a process to prequalify and authorize vendors to perform services or provide goods to the department or the state;

d. Reverse auctions.

Acquisitions are eligible for informal bidding depending on the estimated cost of the item to be purchased.

2. Informal bids include, but are not limited to, the following:

- a. Reverse auctions;
- b. Telephone bids when the department provides requirements orally and documents oral responses from competitive vendors to identical specifications;
- c. Facsimile bids when the department utilizes facsimile machines to provide requirements and specifications to vendors and to receive vendor responses;
- d. Bids received via E-mail or the Internet.

The evaluation criteria may be limited to price and past performance or other relevant information deemed necessary by the department.

“Competitive bidding” means selecting information technology devices or services by means of evaluating vendor responses received from formal or informal bid documents.

“Cooperative acquisition agreement” means an agreement with one or more governmental entities for the purpose of pooling funds, leveraging economies of scale or other joint, cooperative efforts toward the acquisition of information technology.

“Department” means the information technology department.

“Director” means the director of the information technology department.

“Emergency acquisition” means an acquisition meeting the criteria in rule 13.6(14B,18).

“Formal competition” or *“formal bid”* or *“formal bidding”* means an acquisition resulting from the issuance of a formal bid document, or using a contract established from a previous formal bid, or an acquisition from the successful vendor of a formal bid awarded within the previous 60 days.

“General services” means the department of general services or its successor agency.

“Informal competition” or *“informal bid”* or *“informal bidding”* means an acquisition using an informal bid document or process.

“Information technology council” or *“council”* means the 17-member council, established by Iowa Code chapter 14B, that oversees the information technology department and the information technology activities of participating agencies.

“Information technology device” means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. “Information technology device” includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

“Information technology services” means services designed to provide functions, maintenance, and support of information technology devices, or services including but not limited to computer systems application development and maintenance; systems integration and interoperability; operating systems maintenance and design; computer systems programming; computer systems software support; planning and security relating to information technology devices; data management consultation; information technology education and consulting; information technology planning and standards; and establishment of local area network and workstation management standards.

“Negotiated contract” means an agreement that meets the requirements of Iowa Code section 14B.109(4) “b.”

“Operational standards” means information technology standards established by the department according to Iowa Code section 14B.102 that include but are not limited to specifications, requirements, processes, or initiatives that foster compatibility, interoperability, connectivity, and use of information technology devices and services among agencies.

“Participating agency” means any agency other than the state board of regents and institutions operated under its authority; the public broadcasting division of the department of education; the department of transportation’s mobile radio network; the department of public safety’s law enforcement communications systems; and the Iowa telecommunications and technology commission, with respect to information technology that is unique to the Iowa communications network.

“Procurement authority” means an agency authorized by statute to purchase goods and services.

“Procurement standards” means standards established by the council with respect to the acquisition of information technology by all participating agencies.

“Reverse auction” means a repetitive competitive bidding process, performed in a manner most convenient to the department including electronically, that allows vendors to submit one or more bids with each bid having a lower cost than the previous bid. The award shall be made based upon the requirements of Iowa Code section 14B.109(4) *“d.”*

“Software” means an ordered set of instructions or statements that causes information technology devices to process data and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in these rules, software also includes, but is not limited to, an operating system; compiler; assembler; utility; library resource; maintenance routine; application; or computer networking program’s nonmechanized and nonphysical components; arrangements; algorithms; procedures; programs; services; sequences and routines utilized to support, guide, control, direct, or monitor information technology equipment or applications, and “data processing software” as defined in Iowa Code section 22.3A(1) *“e.”*

“Sole source acquisition” means an acquisition meeting the criteria of rule 13.7(14B,18).

“Systems software” means software designed to support, guide, control, direct, or monitor information technology equipment, other system software, mechanical and physical components, arrangements, procedures, programs, services or routines.

“Targeted small business” or *“TSB”* means an Iowa business owned and operated by one or more minority persons, women or persons with disabilities.

“Upgrade” means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology devices.

“Vendor” means a person, firm, corporation, partnership, business or other commercial entity legally doing business in the state which offers for sale or lease information technology equipment, services or software.

471—13.3(14B) Acquisition.

13.3(1) Approval of participating agency information technology acquisitions. Before a participating agency issues a bid document or any other acquisition document or otherwise seeks to acquire information technology devices or services or both through the department or general services, or on its own purchase authority, the acquisition of the information technology devices or services or both must be approved by the department as meeting the procurement standards established by the council and the operational standards of the department. Otherwise the participating agency shall not purchase the information technology devices or services.

Participating agencies shall submit, unless previously exempted or waived, proposed acquisitions of information technology devices, services or both to the department for approval. The proposed acquisition request shall include, as applicable:

- a. Agency name.
- b. Agency unit.
- c. Agency unit address.
- d. Contact person with telephone number and E-mail address.
- e. If an information technology device, a description, functional specifications, or make or model of the device or if an information technology service, a scope of work.

- f.* Intended purpose for which this device or service will be used and what function it will perform when operable.
- g.* Date needed.
- h.* Location and platform where the device(s) or service(s) will be used and what systems, program activity or processes it will support or affect.
- i.* A listing of vendors, or contracts, offering the device(s) or service(s), if known.
- j.* Any other pertinent information.

13.3(2) Review process for proposed acquisitions.

a. The department shall review, regardless of funding source and method of acquisition, a proposed acquisition request submitted by a participating agency with or without procurement authority for compliance with procurement standards established by the council and the operational standards of the department. Review and approval by the department are required prior to issuance of an acquisition document or bid document by a participating agency or by a procurement authority on behalf of a participating agency. Review and approval by the department are also required when a material change or deviation is made to a previously approved proposed acquisition by a participating agency or by the department on behalf of a participating agency.

b. Approved requests will be forwarded to the agency contact person and appropriate procurement authority contacts, and the acquisition may proceed. When requests are not approved, the agency contact will be notified of available options, which include modification and resubmission of the request or cancellation of the request, or the agency may request a waiver from the council pursuant to Iowa Code section 14B.105 and subrule 13.3(3). Once a request is approved, ongoing approval by the department is not required provided that the acquisition request or scope of work remains consistent with the previously approved acquisition request or scope of work. Participating agencies shall obtain the department's approval anytime a material modification of the acquisition or to the scope of work is contemplated. The department may periodically audit acquisitions made by a participating agency for compliance with this chapter, procurement standards of the council, and operational standards of the department. When the audit determines that inconsistencies with established procurement standards, operational standards or this chapter exist, the participating agency shall submit all future acquisition requests and modifications of previously approved acquisition requests to the department for approval for a term determined by the department.

c. Prior to acquiring information technology devices or services to replace failed critical information technology devices, the participating agency shall orally request approval to replace the failed devices by placing a telephone call to the department's help desk at (515)281-5703, describing the nature of the emergency and providing a contact person and telephone number to whom the department is to reply. The participating agency may proceed with the emergency acquisition to replace failed critical information technology devices upon the department's oral approval to the participating agency's contact person or when the department fails to reply to the contact person within two hours of receiving the call at the help desk.

d. Requests not complying with applicable procurement standards or operational standards shall be disapproved, and the devices or services shall not be procured unless a waiver is granted by the council pursuant to Iowa Code section 14B.105.

e. Upon request by a participating agency, the department may acquire, as provided by these rules, any information technology devices or information technology services requested by or on behalf of an agency and accordingly bill the agency through the department's regular process for the information technology devices or information technology services or for the use of such devices or services.

f. The department may provide pertinent advice to a procurement authority or participating agency regarding the acquisition of information technology, including opportunities for aggregation with other acquisitions.

g. The department shall establish a Web page (http://www.iowaccess.org/government/its/Contracts_Purchasing/exemptions.htm) of previously approved information technology devices and services, available contracts and resources for which acquisition approval by the department is not required. The Web page shall be updated from time to time with additions, deletions and modifications.

h. The department may forward the proposed acquisition to the department of management for review.

13.3(3) Waiver requests for procurement standards.

a. Waiver requests. In the event a participating agency is advised that its proposed acquisition is disapproved and the participating agency seeks a waiver of procurement standards, it must file its written waiver request with the department within 20 calendar days of the date of the disapproval. The waiver request shall describe in detail the reasons supporting the waiver request.

b. Department to forward request to council. The department shall forward to all members of the council a copy of the waiver request along with a statement indicating the reasons why the proposed acquisition did not comply with procurement standards. The department's statement of reasons must be filed with the council at least 15 business days prior to the meeting at which the members of the council will consider the waiver request. The participating agency shall have an opportunity to respond to the written submission of the department. The response of the participating agency shall be filed with the council at least 3 business days prior to the day of the meeting at which the members of the council will consider the waiver request.

c. Hearing. The council may conduct a hearing with the department and the participating agency regarding the waiver request at its next scheduled meeting after the date the waiver request is received. Additional evidence may be offered at the time of the hearing. Oral proceedings shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs. Copies of tapes of oral proceedings or transcripts recorded by certified shorthand reporters shall be paid for by the requester.

d. Burden of proof. The burden of proof is on the participating agency to show that good cause exists to grant a waiver to the participating agency to complete the proposed acquisition.

e. The council may grant a waiver only of procurement standards. The council does not have authority to waive operational standards established by the department pursuant to Iowa Code section 14B.102. The council shall notify the participating agency in writing of its decision to grant or deny the waiver. In the event a waiver is denied, the participating agency may appeal to the governor pursuant to Iowa Code section 679A.19.

13.3(4) The approval and review process is illustrated at http://www.state.ia.us/government/its/Administrative_Rules/Process_Charts/index.htm.

471—13.4(14B) Acquisition methods available to the department.

13.4(1) A number of acquisition options exist for the department to acquire information technology devices and services, including but not limited to, competitive bidding, use of a cooperative acquisition agreement, use of a negotiated contract, use of a reverse auction, use of a contract let by other governmental entity, and use of prequalified vendors.

13.4(2) When the department purchases information technology devices or information technology services from contracts let by other governmental entities, the department may purchase devices or services provided that the vendor is in agreement and the terms and conditions of the purchase do not adversely impact the governmental entity which was the original signatory to the contract.

13.4(3) Prequalification of vendors.

a. Using an invitation to qualify, the department may prequalify vendors and make available to participating agencies a list of vendors capable of delivering information technology devices or services and that have been prequalified by the department. The purposes of using an invitation to qualify vendors to supply information technology devices or services include but are not limited to the following:

(1) Standardize state terms and conditions relating to all services provided by vendors, thereby avoiding repetition and duplication.

(2) Accomplish information technology consulting assignments in a manner consistent with operational standards developed and adopted by the department.

(3) Implement a pay-for-performance model directly linking payments to vendors and defined results thereby obtained as required by 2001 Iowa Acts, chapter 169.

(4) Consolidate information technology and project records, including performance assessments, in one location for reference and review.

(5) Reduce time required for solicitation of proposals from vendors for individual projects and staff augmentation.

b. The department shall develop the criteria for vendor qualification based upon its own expertise, information and research, the needs of participating agencies, and these rules. The department shall develop evaluation criteria for each invitation to qualify. The department shall issue invitations to qualify on an as-needed basis. The invitations to qualify shall remain open bidding documents until the department elects to discontinue the invitation to qualify or until five, six or seven years from the date the initial invitation to qualify was issued by the department, depending on the number of option years elected by the department for a particular vendor group. Vendors may apply for eligibility on a continuous basis.

c. Vendors seeking to qualify as vendors eligible to perform work for participating agencies shall be required to meet all the criteria established by the department for a particular type of work. The department shall continuously evaluate applications by vendors for placement on a qualified vendor list for a particular type of work. A prequalified vendor shall be eligible to receive orders from participating agencies for a period specified by the department.

d. Before a participating agency may acquire an information technology device or information technology service from a prequalified vendor, it must obtain all of the required approvals from the department consistent with subrule 13.3(2). In the event the participating agency decides to purchase information technology devices or information technology services from vendors that have been prequalified by the department, the participating agency or the department at the request of the participating agency shall issue a bid document to eligible vendors for a particular information technology device or service. Eligible vendors shall be notified by E-mail and the department's Web site of the request for service. Vendors shall be responsible for obtaining a copy of the request for service from the department's Web site or the Web site of the participating agency. A participating agency may also send a copy of the request for service to particular eligible vendors.

A participating agency or the department shall select vendors on the basis of criteria contained in the bid document. The request for information technology devices or services must be sufficiently detailed so that vendors can provide price and experience information. A participating agency may request a response from vendors in 24 hours or more from the time the request for information technology devices or services was issued. Responses may be received by facsimile or E-mail as directed by the participating agency or department, as applicable.

Before a bid shall be awarded by the participating agency's procurement authority, the department shall approve the vendor selected to perform the work. All vendors submitting a bid shall be notified of the decision of the participating agency or the department regarding the selection of a vendor to perform the work described in the request for information technology services. Aggrieved vendors may appeal a decision to award a specific contract or to deny eligibility pursuant to these rules.

13.4(4) The process is illustrated at http://www.state.ia.us/government/its/Administrative_Rules/Process_Charts/index.htm.

471—13.5(14B) Department bidding requirements and thresholds.**13.5(1) Thresholds.**

a. Information technology devices with an estimated cost over the life of the contract including optional renewals in amounts up to \$10,000 are exempt from the bidding requirements described in this chapter.

b. Information technology services with an estimated annual cost up to \$5,000 or an estimated cost over the life of the contract including optional renewals in amounts up to \$15,000 are exempt from the bidding requirements described in this chapter.

c. Information technology devices or services that do not exceed \$5,000 may be purchased directly from targeted small businesses.

13.5(2) Bid requirements. When competitive bidding is required, the department shall use the following procedures:

a. Acquisition of information technology devices with an estimated cost over the life of the contract including optional renewals in amounts between \$10,000 and \$100,000 are subject to either informal or formal competition.

b. Acquisition of information technology devices with an estimated cost over the life of the contract including optional renewals in amounts of \$100,000 or more are subject to formal competition.

c. Acquisition of information technology services with an estimated annual cost between \$5,000 and \$50,000 or an estimated cost over the life of the contract including optional renewals in amounts between \$15,000 and \$150,000 are subject to either informal or formal competition.

d. Acquisition of information technology services with an estimated annual cost of \$50,000 or more or an estimated cost over the life of the contract including optional renewals in amounts of \$150,000 or more are subject to formal competition.

13.5(3) Notice.

a. When the department competitively acquires information technology devices or services with an estimated cost of less than \$100,000 over the life of the contract including optional renewals, the department shall post a notice of its intent to procure in the following locations:

(1) On the targeted small business Web site 48 hours prior to the time the notice is posted on the department's Web site or posted in a public place; and

(2) On the department's Web site for a period of not less than ten days; and

(3) In a public place.

The notice shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the information technology devices or information technology services to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

b. When the department acquires information technology devices or services with an estimated cost of \$100,000 or more over the life of the contract including optional renewals, the department shall simultaneously post or publish a notice of its intent to procure in the following locations:

(1) At least once in an electronic source of general circulation;

(2) On its Web site for a period of at least ten days; and

(3) On the targeted small business Web site 48 hours prior to the time the notice is published in a paper of general circulation or on the department's Web site.

The notice shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the devices or services to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

c. When the department issues bid documents, the department may elect to conduct the entire acquisition electronically. In such case, paper copies of the bid documents will be available. In order for a vendor to receive a paper copy of the bid documents, the vendor shall make a public records request. The department shall provide a paper copy of the bid documents in accordance with Iowa Code chapter 22 or other applicable law governing public records requests.

13.5(4) In the event the department elects to conduct any acquisition electronically or otherwise, it may request that vendors submit a letter of intent to participate in the acquisition. In the event a vendor fails to submit a letter of intent when requested, the department may declare the vendor ineligible to bid on the particular acquisition.

13.5(5) The bid specifications shall be based upon the needs of the department, or the needs of the participating agency if the acquisition is on its behalf, appropriate operational standards, appropriate procurement standards, plans, policies, initiatives, enterprise resource use, aggregation of state resources and recommendations of the department.

13.5(6) When applicable and in the best interest of the state, the department may trade in devices or services to offset the cost of new devices or services in a manner consistent with 401 IAC 7.17(18).

13.5(7) The department may distribute bid documents to bidders that have expressed an interest in receiving bid documents from the department and to others identified as offering the requested device(s) or service(s) in conformance with the notice requirements of these rules.

13.5(8) The department may consider cash discounts or other value-added services when considering a bid proposal.

13.5(9) The department may consider background information, financial information, or other information identified in the bid documents deemed relevant by the department when awarding contracts for information technology devices or services.

13.5(10) In no event shall proposals be made public until after the proposals have been evaluated and a notice of intent to award a contract has been issued by the appropriate procurement authority.

13.5(11) The department shall resolve tied bid proposals that are equal in all respects and tied in price by drawing lots. Whenever practicable, the drawing shall be held in the presence of the vendors whose proposals are tied. If this is not possible, the drawing shall be made in front of at least three persons and the drawing will be documented in writing. Whenever a tie involves an Iowa firm and a firm outside the state of Iowa, the Iowa firm shall receive preference. Whenever a tie involves two or more Iowa firms and one or more firms outside the state of Iowa, the drawing shall be held among the Iowa firms only. The tied bid proposals involving Iowa-produced or Iowa-manufactured products and devices or services produced or manufactured outside the state of Iowa shall be resolved in favor of the Iowa product or service.

13.5(12) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to reach the department not later than the date and time set for the opening of the bids or proposals. All informal bids shall be submitted by the vendor in time to reach the department prior to the time specified by the department. Bids and proposals shall be marked by the department with the date and time received by the department. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. All vendors to whom bid documents are sent shall be notified of any changes of the time of submission. If an acquisition is canceled prior to the time set for opening the bids or proposals, any responses already received shall be returned unopened or the department in its discretion will destroy the proposals unopened.

13.5(13) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the department if the department finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the department. The department's contact person may contact a vendor to discuss the error in the vendor's proposal. Nothing in this rule shall limit the department's ability to amend its bid documents prior to the date bids or proposals are due.

13.5(14) Financial security. The department may require bid security, litigation security, fidelity security and performance security as designated in the bid documents. When required, security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the department.

13.5(15) Rejection of bids and proposals. The department reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the requirements described in the bid document, or for any other reason as determined by the department. The department shall not be required to provide a reason for the rejection of bids and proposals. Following the rejection of bids, new bids may be requested by the department at any time deemed convenient by the department.

13.5(16) Content of bid document. The bid document may contain the following information:

- a.* A description of or the purpose for which the information technology devices or services are to be used.
- b.* Requirements, specifications and operational standards or procurement standards to which the devices and services must conform. The document may include but is not limited to a description of the devices or services, make and model of the devices or services to be purchased, specifications and operational standards or procurement standards the devices or services must meet in order to be considered for the acquisition.
- c.* The date, time and place of submittal.
- d.* A statement requiring an explanation of associated criteria including maintenance and service agreements, operating and environmental constraints such as temperature, power, software limitations, ownership, trademark or other operational restrictions.
- e.* A statement requiring the vendor's name, primary place of business, and location of service and sales offices appropriate to the acquisition.
- f.* A statement providing that nonconforming devices or services may be considered if the vendor is able to meet required performance levels, reduce costs, or furnish evidence of other overriding considerations.
- g.* Requirements for bid, performance, fidelity, litigation or surety bonds and insurance coverage when necessary.
- h.* Delivery dates, installation time or modification requirements.
- i.* Warranty and service maintenance requirements.
- j.* The site at which the information technology devices or services are to be housed or provided.
- k.* When necessary, requirements for the demonstration of the devices or services as well as vendors' conferences, including times and places.
- l.* A statement requiring the submittal of and explanation of full acquisition and operational costs associated with the devices or services.
- m.* Terms and conditions in conformance with 2001 Iowa Acts, chapter 169, when the department purchases services.
- n.* Terms and conditions developed by the department when the department is purchasing information technology devices.
- o.* Any other relevant information specified or requested by the department.

13.5(17) Review of proposals.

- a.* Review of the proposals shall commence after the closing date for submittal of bids and shall be completed within the time limit set forth in the bid document. However, the department shall be permitted to vary the time by which the evaluation process shall be completed by notifying vendors either in the bid document or after the evaluation of proposals has commenced. In the event the acquisition is for a participating agency, the composition of the evaluation team will consist of at least one representative from the participating agency and one representative from the department.
- b.* The evaluation team shall provide a recommendation to the director of the information technology department with respect to the awarding of the contract.

c. The director of the information technology department shall act upon the recommendation and approve or disapprove the award or request additional information. If the department is purchasing information technology devices or services for a participating agency, and before a decision to issue a notice of intent to award is made, the director shall consult with the head of the participating agency making the purchase or the agency head's designee regarding the recommendation to award a contract. After consultation, the department shall issue a notice of intent to award and notify all vendors that submitted bids or proposals.

13.5(18) The department may establish contracts for information technology devices and services that are advantageous to the state. When the bid documents provide that the department will purchase enhancements, extensions, new features and new devices, the contract created for the acquisition may allow for the addition of enhancements, extensions, new features, and new devices to the contract during its term.

13.5(19) Contracts entered into and made available by other state procurement authorities or political subdivisions of the state or cooperative acquisition agreements may be used to acquire information technology devices or services when appropriate. Contracts entered into by the department may be extended to, and for the use of, other state purchasing authorities, political subdivisions or their offices or units including but not limited to school corporations, nonpublic accredited schools, area education agencies or area agencies on aging, community colleges, judicial districts, community-based corrections or other like agencies at any level of government, or purchasing agencies.

471—13.6(14B,18) Emergency acquisitions. The department may purchase information technology devices or services without using competitive bidding processes when there is an emergency in which circumstances prevail that reasonably preclude the full application of these rules including, but not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which the department must act to preserve critical services or programs; or
3. In which the situation is a result of events or circumstances not reasonably foreseeable.

The department shall attempt to acquire information technology devices or services with as much competition as practicable under the circumstances.

Emergency acquisitions may also be made in conformance with Iowa Code section 18.6(2) and 401 IAC 7.2(18).

471—13.7(14B,18) Sole source acquisitions.

13.7(1) Sole source acquisition shall be avoided unless clearly necessary and justifiable. The department may acquire information technology devices or services without using competitive bidding procedures when:

- a. The information technology device or service to be acquired is systems software or an upgrade; or
- b. Compatibility is the overriding consideration; or
- c. A single source is clearly the most qualified, eligible or acceptable to supply the information technology device(s) or to perform a service; or
- d. The work to be performed is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, or proximity to the project, could most satisfactorily provide the information technology device or the service; or
- e. The acquisition would prevent voidance or termination of a warranty; or
- f. The acquisition would prevent default under a contract or other obligation; or
- g. The federal government or other provider of funds for the information technology devices or services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the department's use of the funds in a way that restricts the department to only one source; or

h. Applicable law requires, provides for, or permits use of a sole source procurement.

Sole source purchases may also be made in conformance with Iowa Code section 18.6(2) and 401 IAC 7.2(18).

13.7(2) Sole source acquisitions shall follow the procedures described below:

a. The director or director's designee shall sign all sole source contracts and amendments regardless of cost or length of term. Use of a sole source acquisition does not relieve the department from negotiating a fair and reasonable price and thoroughly documenting the acquisition action.

b. The department shall verify a service provider's qualifications, insurance coverage (if applicable), information on warranty offered, and any other data pertinent to the acquisition.

471—13.8(14B) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the decision of the director may appeal the decision by filing a written notice of appeal and request for contested case before the council, sent to Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319-0141, within 30 calendar days of the date of award. A written notice of appeal may be filed by a fax transmission. The notice shall state the following:

1. The relief demanded and the facts and law relied upon for relief;
2. The particular provisions of the statutes and rules involved with specific reference to the grounds identified in Iowa Code section 17A.19(10);
3. On whose behalf the petition is filed; and
4. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

471—13.9(14B) Procedures for vendor appeal. The following procedures shall apply when the council considers a vendor appeal.

13.9(1) Upon receipt of a notice of vendor appeal, the council may in its discretion refer a vendor appeal to the department of inspections and appeals and request a hearing before a qualified administrative law judge. The ruling of an administrative law judge acting as the sole presiding officer shall constitute a proposed decision. Council review of a proposed decision shall be according to Iowa Code subsection 17A.15(3) and these rules. Nothing in this subrule shall prevent the council from hearing a vendor appeal without the assistance of an administrative law judge. This subrule merely authorizes an alternative procedure.

13.9(2) A written notice of the date, time and location of the appeal hearing shall be sent to the aggrieved vendor or vendors. A hearing shall be held on the vendor appeal within 20 days of the date the notice of appeal was received by the department. The hearing may be a consolidated hearing at which all timely filed appeals by aggrieved vendors for a particular acquisition are considered. The department shall not be required to file a motion to consolidate all appeals. It shall be sufficient for the department to request one hearing for all the appeals filed for a particular acquisition. A copy of the transmittal form shall be made available to the aggrieved vendors.

13.9(3) Discovery. Any discovery requests shall be served simultaneously on the parties within seven days of the notice of appeal.

13.9(4) Witnesses and exhibits. Within three days following notice of appeal, the parties may contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. The parties shall exchange exhibits at least seven days prior to the hearing. The department shall exchange exhibits only with aggrieved parties. In its discretion, the department may distribute to other members of the public exhibits upon request and subject to the provisions of Iowa Code chapter 22.

13.9(5) Evidence for a telephone or network hearing. If the hearing is conducted by telephone or on the Iowa communications network, all exhibits must be delivered to the office of the presiding officer three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing. Hearings are open to the public.

13.9(6) Record requirements. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the department for at least two years from the date of the proposed decision.

13.9(7) Contents of decision. The administrative law judge, or the council if an administrative law judge is not used, shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail. The proposed decision shall become the final decision of the council ten days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision, or the council seeks review on its own motion.

13.9(8) Dismissal. A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

471—13.10(14B) Review of decision.

13.10(1) Notice of an appeal for review of a proposed decision issued by an administrative law judge or notice of the council's own review shall be mailed to all parties by the council chair or chair's designee. Within ten days after mailing of the notice of appeal or the council's review, any party may submit to the council exceptions to and a brief in support of or in opposition to the proposed decision, copies of which shall be mailed by the submitting party to all other parties to the proceeding. The council chair or chair's designee shall notify the parties if oral argument will be heard and shall specify whether oral argument will be heard in person, by telephone or over the Iowa communications network. The council chair shall schedule the council's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the council's own review.

13.10(2) Failure to appeal a proposed decision will preclude judicial review unless the council reviews the proposed decision on its own motion.

13.10(3) Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

13.10(4) Each party shall have the opportunity to file exceptions and present briefs. The council chair may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the council chair shall notify all parties of the date, time and location at least ten days in advance.

13.10(5) The council shall not receive any additional evidence, unless it grants an application to present additional evidence. A party must file any such application no less than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the council shall order the conditions under which it shall be presented.

13.10(6) Requests for rehearing shall be made to the director within ten days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision failed to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

13.10(7) The council's final decision shall be in writing and it may incorporate all or part of the proposed decision.

13.10(8) Judicial review of the council's final decisions may be sought in accordance with Iowa Code section 17A.19.

471—13.11(14B) Stay of agency action for vendor appeal.

13.11(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay.

13.11(2) Any party adversely affected by a final decision and order may petition the department which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the council within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

13.11(3) When granted. The council, as appropriate, may grant a stay when the director concludes that the requirements of Iowa Code section 17A.19(5) "c" are satisfied.

13.11(4) Vacation. A stay may be vacated by the council upon application of the department or any other party.

471—13.12(14B,8) Service contracts. When the department purchases services, the provisions of 2001 Iowa Acts, chapter 169, relating to service contracts shall apply. Additionally, any rules adopted by the department of general services containing uniform terms and conditions shall apply to all contracts for services.

The director or the director's designee may authorize the negotiation of a contract without competitive bidding or solicitation of quotations or advertising for proposals if the service is to be provided by another governmental entity or educational institution or nonprofit corporation or if the service sought qualifies as a sole source acquisition or an emergency acquisition.

These rules are intended to implement Iowa Code chapter 14B.

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